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# State v. Lenge Appellant's Brief Dckt. 44957

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ERIC D. FREDERICKSEN  
State Appellate Public Defender  
I.S.B. #6555

ANDREA W. REYNOLDS  
Deputy State Appellate Public Defender  
I.S.B. #9525  
322 E. Front Street, Suite 570  
Boise, Idaho 83702  
Phone: (208) 334-2712  
Fax: (208) 334-2985  
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44957
Plaintiff-Respondent,	)	
	)	KOOTENAI COUNTY
v.	)	NO. CR 2014-12105
	)	
AMY JO LENGLE,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Amy Jo Lengle appeals from the district court's February 13, 2017 judgment relinquishing jurisdiction over her and executing her unified sentence of four years, with two years fixed, for the crime of burglary. Ms. Lengle contends the district court abused its discretion when it relinquished jurisdiction over her, and when it subsequently denied her motion pursuant to Idaho Criminal Rule 35 ("Rule 35") for reconsideration of sentence.

### Statement of Facts & Course of Proceedings

Ms. Lengle was charged by Information with grand theft by unauthorized control and burglary. (R., pp.30-31.) The State alleged she wrote and cashed a check that did not belong to her, in the amount of \$85.00. (PSI, p.17.) She pled guilty to burglary pursuant to a plea agreement, and the State dismissed the grand theft count. (R., pp.32-33, 34.) The district court entered a withheld judgment and placed Ms. Lengle on probation for a term of two years. (R., p.41.) The judgment was entered on February 23, 2015. (R., pp.42-46.)

On November 4, 2015, the district court entered an order for bench warrant based on a report alleging Ms. Lengle violated her probation by committing the crime of resisting or obstructing officers, and by consuming alcohol on two occasions. (R., pp.52-55.) On November 12, 2015, the State filed a motion to show cause why probation should not be revoked based on the allegations. (R., p.71.) Ms. Lengle admitted to violating probation, and the district court accepted her admissions. (11/23/15 Tr., p.7, Ls.5-14.) The district court revoked Ms. Lengle's withheld judgment, sentenced her to a unified term of four years, with two years fixed, and placed her back on probation with the condition that she successfully complete drug court. (11/23/15 Tr., p.7, Ls.5-14, p.11, Ls.6-25; R., p.87.) The judgment was entered on November 23, 2015. (R., pp.88-91.)

On March 2, 2016, the State filed a motion to show cause why probation should not be revoked, attaching a report of violation which alleged Ms. Lengle violated her probation by being suspended from drug court. (R., pp.92-95, 112-13.) Ms. Lengle admitted to violating probation, and the district court accepted her admission. (R., p.123.) The district court executed Ms. Lengle's unified sentence of four years, with two years fixed, and retained jurisdiction. (R., p.123.) The judgment was entered on July 21, 2016. (R., pp.124-26.)

Ms. Lengle participated in a rider with the Idaho Department of Corrections (IDOC). (Presentence Investigation Report (PSI), p.3.) The IDOC recommended the district court relinquish jurisdiction over Ms. Lengle. (PSI, p.3.) Following a hearing, the district court relinquished jurisdiction over Ms. Lengle and executed her sentence. (2/13/17 Tr., p.11, Ls.9-18.) The judgment was entered on February 13, 2017. (R., pp.130-34.) Ms. Lengle filed a Rule 35 motion for reconsideration of sentence on February 21, 2017. (*See* R., p.6.) She filed a timely notice of appeal from the district court's judgment on March 23, 2017. (R., pp.135-38.) The district court held a hearing on Ms. Lengle's Rule 35 motion on April 18, 2017. (R., p.153.) The district court orally denied Ms. Lengle's motion at the hearing, and entered a written order to that effect on April 24, 2017. (4/18/17 Tr., p.12, L.23 – p.13, L.3; R., pp.154-55.)

### ISSUES

- I. Did the district court abuse its discretion when it relinquished jurisdiction over Ms. Lengle and executed her underlying sentence?
- II. Did the district court abuse its discretion when it denied Ms. Lengle's Rule 35 motion?

### ARGUMENT

#### I.

#### The District Court Abused Its Discretion When It Relinquished Jurisdiction Over Ms. Lengle And Executed Her Underlying Sentence

This Court reviews a district court's decision to relinquish jurisdiction for an abuse of discretion. *See State v. Latneau*, 154 Idaho 165, 166 (2013); *see also* I.C. § 19-2601(4).

A court properly exercises its discretion when it (1) correctly perceives the issue to be one of discretion, (2) acts within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it, and (3) reaches its decision by an exercise of reason.

*Latneau*, 154 Idaho at 166 (citation omitted). The district court abused its discretion when it relinquished jurisdiction over Ms. Lengle because it did not reach its decision by an exercise of reason.

Ms. Lengle's conduct on her rider did not warrant relinquishment, and the district court should have placed Ms. Lengle on probation. Ms. Lengle received one formal disciplinary sanction on her rider, for making a sexual gesture to a security officer, and received a number of informal sanctions for conduct such as talking, disrupting, disrespecting staff, and bartering. (PSI, p.5.) Despite these incidents, the IDOC staff recognized Ms. Lengle "seems to have a positive attitude towards her recovery . . . ." (PSI, p.7.) And Ms. Lengle would have been successful on probation, as she had family support, employment, and a plan for treatment. (2/13/17 Tr., p.8, Ls.15-25.) Ms. Lengle told the district court she had changed while on her rider, and was excited about the opportunities ahead for her. (2/13/17 Tr., p.8, Ls.15-25, p.9, Ls.8-10.) The district court asked Ms. Lengle what was going to be different if she was placed on probation for a second time, and she explained she was now committed to her recovery. (2/13/17 Tr., p.10, Ls.1-14.)

Ms. Lengle wrote a letter to the district court stating she did not successfully complete her rider because of mental health issues and impulsive and anti-social behavior. (PSI, p.1.) However, she shared she learned a lot from one of her classes, volunteered in various capacities, and attended a weekly alcoholics anonymous meeting. (PSI, p.1.) She told the district court, "I am working every day to make the best choices that I can be proud of." (PSI, p.1.) She said:

I want to change. Through Christ all things are possible. I am learning slowly the correct way to walk through the hills and valleys of life. Every stumble and fall is necessary for my growth. I will not stay down. I am thankful for hard times just as grateful as I am for the good ones. They mold me into the woman I am meant to be.

(PSI, p.1.) Ms. Lenge included with her letter a detailed plan for probation and treatment, and told the district she would comply with all terms of probation “as well as any other conditions you wish to impose.” (PSI, p.2.)

The district court abused its discretion when it relinquished jurisdiction over Ms. Lenge instead of placing her on probation. The underlying offense was a minor financial crime, though charged as burglary, and did not warrant a term of incarceration. Ms. Lenge dropped out of high school when she was 17 years old, after becoming pregnant, but later obtained her GED and was employed prior to her incarceration. (PSI, p.23) Ms. Lenge’s conduct on her rider did not warrant relinquishment, and she should have been given a second chance at probation in light of her commitment to her recovery.

## II.

### The District Court Abused Its Discretion When It Denied Ms. Lenge’s Rule 35 Motion

“A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court . . . and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe.” *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994). “The denial of a motion for modification of a sentence will not be disturbed absent a showing that the court abused its discretion.” *Id.* In examining a district court’s denial of a motion for modification, this Court “examine[s] the probable duration of confinement in light of the nature of the crime, the character of the offender and the objectives of sentencing, which are the protection of society, deterrence, rehabilitation and retribution.” *Id.* “If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction.” *Id.*

The district court abused its discretion when it denied Ms. Lenge's Rule 35 motion because Ms. Lenge provided additional information to the district court regarding her plan for probation. At her rider review hearing, Ms. Lenge told the district court she intended to live with her husband if placed on probation. At the hearing on her Rule 35 motion, Ms. Lenge stated she was going to live with her grandfather instead of her husband, because she recognized her husband had been enabling her. (4/18/17 Tr., p.8, Ls.7-9.) She also told the district court she had been accepted into drug court and was "excited to get another opportunity to complete that." (4/18/17 Tr., p.7, L.21 – p.8, L.4.) Ms. Lenge told the district court she had employment lined up at a local gas station, she wanted to help her grandfather and husband, and she wanted to focus on her treatment in the community. (4/18/17 Tr., p.7, Ls.7-17, p.8, Ls.13-16.)

At the time of her Rule 35 hearing, Ms. Lenge was participating in programming within the IDOC and was "about 30 days away from completing [her] programming." (4/18/17 Tr., p.6, L.23 – p.7, L.1.) She asked the district court to either reduce her fixed time or place her on probation. (4/18/17 Tr., p.7, Ls.2-6.) In light of all of the mitigating factors that exist in this case, and considering her new plan to reside with her grandfather and participate in drug court, the district court abused its discretion when it denied her Rule 35 motion.

### CONCLUSION

Ms. Lenge respectfully requests that this Court vacate the district court's February 13, 2017 judgment and remand this case to the district court with instructions to place her on probation and/or reduce her sentence. Alternatively, she requests that this Court vacate the district court's order denying her Rule 35 motion and remand this case to the district court with instructions to place her on probation and/or reduce her sentence.

DATED this 24<sup>th</sup> day of August, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
ANDREA W. REYNOLDS  
Deputy State Appellate Public Defender



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24<sup>th</sup> day of August, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

AMY JO LENGLE  
INMATE #114354  
PWCC  
1451 FORE ROAD  
POCATELLO ID 83205

SCOTT WAYMAN  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

AMANDA R MONTALVO  
KOOTENAI COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

AWR/eas